

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

IN THE MATTER OF:

**Wittenberg-Livingston Inc.
(WITTENBERG)**

**120 Newport Center Drive, Suite 220
Newport Beach, CA 92660**

)

Complaint No. R4-0084

And/or

For

ASN Ventura, LLC (ASN)

)

Administrative Civil Liability

**One Spectrum Pointe Drive, Suite 225
Lake Forest, CA 92630**

WITTENBERG AND/OR ASN IS HEREBY GIVEN NOTICE THAT:

1. Wittenberg and/or ASN are alleged to have violated requirements contained in State Water Resources Control Board Order No. 99-08-DWQ, [NPDES Permit No. CAS000002] (hereinafter General Permit) for which the Regional Water Quality Control Board, Los Angeles Region (Regional Board) may impose civil liability under §13385 of the California Water Code (CWC). The General Permit regulates discharges of storm water associated with construction activities.
2. A hearing concerning this Complaint will be held before the Regional Board or Regional Board Hearing Panel (Hearing Panel) within ninety days after service of this Complaint on Wittenberg and/or ASN . Wittenberg and/or ASN will be notified at least ten days in advance of the date, time and place of the hearing. Wittenberg and/or ASN or Wittenberg and/or ASN 's representative (s) will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board.
3. The Regional Board will consider whether to affirm, reject or modify the proposed administrative civil liability or to refer the matter to the Attorney General for recovery of judicial civil liability.
4. In the event that Wittenberg and/or ASN fail to comply with the requirements of this Complaint, the Executive Officer is authorized to refer this matter to the Office of the Attorney General for enforcement.

THE FOLLOWING FACTS ARE THE BASIS FOR THE ALLEGED VIOLATIONS IN THIS MATTER:

BACKGROUND

5. Storm water runoff from Wittenberg and/or ASN 's 64.9-acre construction site, WDID No. 4 19 C 320373, located south of Telephone Road and east of Saticoy Avenue in the City of Ventura is regulated under the General Permit. On March 6, 2003, the State Water Resources Control Board (SWRCB) processed a Notice of Intent (NOI), a copy of which is attached hereto as exhibit "A" and incorporated by reference. NOI named Wittenmberg as the "Property Owner" and was signed by Mr. John Luedtke (Vice President of ASN).
6. In its NOI, Wittenberg and/or ASN stated that grading would be completed August 1, 2003, and that project completion would occur by August 2004.
7. On March 9, 2004, Regional Board staff (staff) conducted a joint site inspection with the City of Ventura. During the inspection, staff observed permit violations that resulted in the Regional Board Executive Officer sending a Notice of Violation (NOV) to Wittenberg on April 7, 2004.
8. Upon investigation, staff discovered that Wittenberg no longer owned the property and had sold it to ASN in September of 2003. In a telephone call on April 20, 2004, staff notified Wittenberg that General Permit requires dischargers to file a Notice of Termination (NOT) with the Regional Board when property ownership has been transferred. Also, in a separate telephone call on April 20, 2004, staff informed ASN that the General Permit requires the landowner to file a Notice of Intent (NOI) with the State Water Resources Control Board (SWRCB) and pay the appropriate fee. Neither Wittenberg had filed a Notice of Termination (NOT) with the Regional Board nor had ASN filed an NOI with SWRCB when the land transfer occurred. Staff was not aware of the ownership change at the time of inspection.
9. On April 22, 2004, staff received an NOT from Wittenberg. According to the NOT, the property was sold to ASN on September 4, 2003.
10. On May 3, 2004, staff received a copy of an NOI and the fee filed with SWRCB from ASN. The NOI was signed on May 3, 2004 by Mr. John Luedtke.

ALLEGED VIOLATIONS

11. Wittenberg is alleged to have violated the Notification Requirement of the General Permit, by not filling an NOT when Wittenberg transferred the land ownership to ASN.
12. ASN is alleged to have violated the Notification Requirement and §C.18. of the General Permit, by not submitting an NOI when land ownership was transferred from Wittenberg to ASN.
13. In addition, Wittenberg and/or ASN are alleged to have violated the following 6 provisions of the General Permit:
 - I. SECTION A: STORM WATER POLLUTION PREVENTION PLAN.
 1. Objectives. Wittenberg and/or ASN failed to develop and implement a Storm Water Pollution Prevention Plan (SWPPP) to meet requirement of Section A.1 through C.10.
 - II. SECTION A: STORM WATER POLLUTION PREVENTION PLAN.
 6. Erosion Control. Wittenberg and/or ASN failed to implement erosion control on all disturbed slopes.
 - III. SECTION A: STORM WATER POLLUTION PREVENTION PLAN.
 8. Sediment Control. Wittenberg and/or ASN failed to implement sediment control along the construction site's perimeters and at all operational inlets to the storm drain system.
 - III. SECTION A: STORM WATER POLLUTION PREVENTION PLAN.
 9. Non-Storm Water Management. Wittenberg and/or ASN failed to eliminate the non-storm water discharge from the concrete wash areas.
 - IV. SECTION A: STORM WATER POLLUTION PREVENTION PLAN.
 11. Maintenance, Inspection, and Repair. Wittenberg and/or ASN failed to maintain and repair the construction site's Best Management Practices (BMPs).
14. On March 17, 2004, during a storm water inspection of Wittenberg and/or ASN 's construction project, Regional Board staff observed:
 - a. §A.1. (c) - (Objective): Wittenberg and/or ASN's SWPPP did not include a BMP time schedule for BMPs construction and implementation.

- b. §A.5.(c)(6) - (Source Identification): Wittenberg and/or ASN 's SWPPP did not include the list and telephone number of the qualified person(s) who has been assigned responsibility for prestorm, poststorm, and storm event BMP inspection
 - c. §A.6 – (Erosion Control): BMPs were not effectively implemented to stabilize soil on all slopes.
 - d. §A.8- (Sediment Control): BMPs were not effectively implemented at all appropriate locations along the site perimeter and at all operational inlets to the storm drain system. Sediment laden storm water was discharged from the site onto the adjacent property. Also, effective anti-tracking BMPs were not implemented at the site.
 - e. §A.9 – (Non-Storm Water Management): Wittenberg and/or ASN 's SWPPP did not include a non-storm water management section. Concrete wash bin and concrete wash area was not effectively contained and concrete wash water run off was observed.
 - f. §A.10 – (post-Construction Storm Water Management): Wittenberg and/or ASN's SWPPP did not include a post-construction storm management plan.
 - g. §A.11- (Maintenance, Inspection, and Repair): Site BMPs were not maintained and repaired at the site boundaries and storm drains. Sediment and gravel were observed on the street and next to the storm drain due to broken sandbags.
15. On April 7, 2004, a Notice of Violation (NOV) was mailed to Wittenberg and/or ASN. The NOV cited the Permit violations observed by the Regional Board staff during the March 9, 2004 inspection. The NOV stated that to come into compliance with the provisions of the Permit, Wittenberg and/or ASN were required to:
- 1. **“Submit a SWPPP that meets the standards outlined in Section A.1 through C.10 of the Permit, and that contains a schedule for implementation of the BMPs. The SWPPP shall be updated to state that the corrective measures have been effectively implemented and are being monitored. The SWPPP shall be submitted to Mr. Alex Alimohammadi at:**

**California Regional Water Quality Control Board-Los Angeles Region
320 West 4th Street, Suite 200
Los Angeles CA, 90013”**
 - 2. **Immediately implement erosion and sediment control BMPs, and a BMP maintenance program in accordance with the schedule in your SWPPP. Include in your submittal pictures of the BMPs implemented.**

16. On June 28, 2004 and July 14, 2004, City of Ventura inspectors did a follow-up site inspection to verify compliance with the General Permit and local ordinances. The inspectors notified the Regional Board staff that the site has not fully complied with the regulations.
17. On July 2, 2004, the Regional Board staff received a response to the NOV sent on April 7, 2004. However, the response did not fully comply with the regulations

POTENTIAL CIVIL LIABILITY

18. CWC § 13385(a)(2) provides that any person who violates waste discharge requirements issued pursuant to the Federal Clean Water Act shall be civilly liable. CWC § 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs.
19. Pursuant to Section 13385(c)(1) of the CWC, Wittenberg and/or ASN is civilly liable for the sum of \$10,000 per day per violation of its General Permit. The total potential maximum civil liability assessment for the violations described herein is 3,800,000 as set forth in the following chart.

POTENTIAL MAXIMUM PENALTY

<i>Penalty Category</i>	Duration	Calculation	Total
§A.6-(Erosion Control)	96 days (3/17/04-6/28/04)	94 days X 10,000/day	\$940,000
§A.8-(Sediment Control)	96 days (3/17/04-6/28/04)	94 days X 10,000/day	\$940,,000
§A.9-(Non-Storm Water Management)	96 days (3/17/04-6/28/04)	94 days X 10,000/day	\$940,,000
§A.11-(Maintenance, Inspection, and Repair)	96 days (3/17/04-6/28/04)	94 days X 10,000/day	\$940,,000
§A.1.(c) –(SWPPP Objectives)	1 day (3/17/04)	1 day X 10,000/day	\$10,000
§A.5.(c) 6 -(SWPPP Source Identification)	1 day (3/17/04)	1 day X 10,000/day	\$10,000
§A.9- (SWPPP Non-Storm Water Management)	1 day (3/17/04)	1 day X 10,000/day	\$10,000
§A.10- (SWPPP Post-Construction Storm Water management)	1 day (3/17/04)	1 day X 10,000/day	\$10,000
POTENTIAL MAXIMUM ACL			\$3,800,000

20. Pursuant to of the CWC §13385(e), the Regional Board has considered the following factors in determining the amount of civil liability to be imposed:

a. Nature, circumstances, extent, and gravity of the violations:

Wittenberg and/or ASN failed to develop and implement a SWPPP that described and implemented with time schedule, and maintained BMPs; listed person(s) responsible for prestorm, poststorm, and storm events BMPs inspection; described all non-storm water discharges; and provided a post-construction water management plan. Erosion and sediment controls to stabilize disturbed areas throughout the construction site were not implemented, Non-storm water discharges were not effectively managed, and BMPs implemented were not maintained and repaired. Therefore, a reduction from the maximum civil liability is not warranted.

b. Susceptibility of the discharge to cleanup or abatement:

The discharge of construction pollutants (i.e. sediment and concrete wash water) is not easily cleaned-up once it has been released into the storm drain. Therefore, a reduction from the maximum civil liability is not warranted.

c. Violator's ability to pay:

Wittenberg and/or ASN has not provided sufficient information for the Regional Board to determine its ability to pay.

d. Effect on Permittee's ability to continue its business:

Wittenberg and/or ASN has not provided any information for the Regional Board to determine the impact that the proposed civil liability may have on the Wittenberg and/or ASN's ability to continue its business.

e. Voluntary cleanup efforts undertaken:

When the BMPs installed by Wittenberg and/or ASN failed to contain contaminated storm water runoff, it did not take any voluntary efforts to cleanup the pollutants discharged from its construction site. Therefore, a reduction from the maximum civil liability is not warranted.

f. Prior history of violations:

No prior violation has been noted. Therefore, a reduction from the maximum civil liability is warranted.

g. Degree of culpability:

Wittenberg and/or ASN violated the terms of the General Permit by failing: (1) to develop a complete SWPPP to address special circumstances at their construction site, (2) to implement effective BMPs at the construction site to prevent sediment laden storm water from entering storm drains and the adjacent property.

h. Economic benefit or savings:

To prepare a typical SWPPP for a construction site of this size and complexity, it costs an average of \$2000. In addition, economic savings from not implementing sediment/erosion control BMPs and lack of maintenance on at least 15% of the 64 acres of disturbed land is estimated at \$5,760. The breakdown of this amount is as follows:

1. 15% of 64 acres = 9.6 acres;
2. (9.6 acres)x(\$600 per acres of implementation of BMPs)=\$5,760; and
3. \$5,760 is the amount that Wittenberg and/or ASN saved by not implementing and maintaining effective BMPs at the construction site.

Also, by allowing an unauthorized non-storm water discharge to leave the site, Wittenberg and/or ASN has saved \$4,000.

- i. Other matters as justice may require: An additional matter to consider includes time spent by staff of the Regional Board in evaluating the incidents of violation and preparing this Complaint and related documents. The Regional Board charges a rate of \$70 per hour for staff cost recovery. With total staff time of approximately 20 hours, staff costs incurred by the Regional Board are estimated to total \$1,400:

$$20 \text{ hours} \times \$70 \text{ per hour} = \$1,400$$

21. After consideration of the factors stated in § 13385(e) of the CWC, staff's lack of data to substantiate that fauna and flora exposed to the discharged pollutants were impaired, the Regional Board Executive Officer recommends that administrative civil liability be imposed by the Regional Board in the amount of \$48,160, which includes the following:
 - a. Penalty of \$2,000 for not developing and implementing a SWPPP;
 - b. Penalty of \$5,760 for not implementing and maintaining effective BMPs;
 - c. Penalty of \$4,000 for discharging an unauthorized non-storm water;
 - d. CWC § 13385 penalty of \$35,000 for 7 violations noted on 3/17/04; and
 - e. Reimbursement of \$1,400 in Regional Board staff costs (20 hours x \$70/hour).

RECOMMENDED CIVIL LIABILITY

<i>Penalty Category</i>	Calculation	Total
<i>Avoided cost SWPPP-Section A</i>	\$2,000 for not developing and implementing a complete SWPPP for the entire 64.9-acre site (64 acres disturbed area).	\$2,000
<i>Avoided cost - Sections</i>	<p>§A.6-(Erosion Control): for not implementing effective erosion control BMPs</p> <p>§A.8- (Sediment Control): for not implementing effective sediment control BMPs</p> <p>§A.11- (Maintenance Inspection and Repair): for not maintaining the BMPs)</p> <p>The percentage of the total disturbed area (64 acres) that effective BMPs were not maintained is estimated to be 15%.</p> <p>(9.6 acres)x(\$600/acre)</p> <p>§A.9- (Non-Storm Water Management): for not implementing effective non-storm water management.</p>	<p>\$5,760</p> <p>\$4,000</p>
<i>Environmental impact</i>	Not quantified	-0-
<i>Deterrence Factor</i>	3/17/04- (7 violations)x(\$5,000/violation)	\$35,000
<i>Reimbursement for Staff Costs</i>	Staff expended 20 hours x \$70/hour	\$1,400
TOTAL RECOMMENDED PENALTY		\$48,160

22. Wittenberg and/or ASN may waive its right to a hearing. Should Wittenberg and/or ASN choose to waive its right to a hearing, an authorized agent must sign the waiver form attached to this Complaint and return the executed waiver to the Regional Board at 320 West 4th Street, Suite 200, Los Angeles, CA 90013, to be received by the Regional Board by the close of business on July 30, 2004. If the hearing is waived, in order to satisfy the civil liability, a check in the amount of \$48,160 (Payable to the State Water Resources Control Board-Storm Water Account) shall accompany the signed waiver.
23. Regulations of the US Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of Clean Water Act, including NPDES permit violations. Accordingly, interested persons will be given 30 days to comment on any proposed settlement of this complaint.

If Wittenberg and/or ASN has any questions, please contact Ejigu Solomon at (213) 620-2237 or Alex Alimohammadi at (213) 620-2243.

Date

Jonathan Bishop
Interim Executive Officer

WAIVER OF THE RIGHT TO A HEARING

By signing below and returning this Waiver, I hereby waive the right of Wittenberg and/or ASN to a hearing before the Regional Board to dispute the allegations and civil liability set forth in Administrative Civil Liability Complaint No. R4-2004-0050 (Complaint) issued by the Regional Board Executive Officer. Wittenberg and/or ASN understands that this Waiver gives up the rights to contest the allegations of the Complaint and the amount of civil liability it imposes

Wittenberg and/or ASN elects to pay the civil liability in the following manner:

Enclosed herewith in full payment of the civil liability is a \$48,160 check payable to "State Water Resources Control Board Cleanup and Abatement Account."

Wittenberg and/or ASN understands that this Waiver gives up the rights to argue against the allegations made by the Executive Officer in this Complaint and imposition of, and the amount of, civil liability imposed. Wittenberg and/or ASN also understands that if an Administrative Civil Liability Order is adopted by the Regional Board, payment in full will be due in thirty days after the date of the adoption of the Order.

I hereby affirm that I am duly authorized to act on behalf of and to bind Wittenberg and/or ASN in the making and giving of this Waiver.

Wittenberg and/or ASN

Date: _____

By: _____
(Signed name)

(Printed or typed name)

Position: _____